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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/000,121
Filing Date: October 31, 2001
Appellant(s): NAGDA ET AL.

John P. Wagner, Jr. Registration
No.: 35,398
WAGNER BLECHER LLP
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/30/2010 appealing from the Office action mailed 06/23/2010.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1, 3-30, and 33-42 are pending and stand rejected. Claims 2, 31, and 32 have been previously cancelled. This Appeal involves Claims 1, 3-30, and 33-42.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5835716	Hunt	11-1998
6560509	Williamson	4-199

6035291	Theil	3-2000
20030036935	Nel	2-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 3, 4-19, 26-28, 30, 33-35 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al. (5,835,716) in view of Williams et al. (6,560,509) and Theil (6,035,291).

Art Unit: 3629

4. With respect to Claim 1: Hunt discloses the use of an information exchange system comprising:

- a. A link to a communication network coupled to a plurality of partner databases storing information related to carrier availability (Hunt discloses the use of a partner subsystem (9) with a request database, that is different from the transportation database, and which ports data to the centralized database, which stores demand specification information, See Claims 6-9, Column 4, lines 45-62).
- b. A database (50) coupled to a communications network (10), for storing a demand entry comprising shipping demand specifications and carrier entries (Column 4, lines 27-44, Hunt discloses the database is for storing data for the carrier space listed or requested. The examiner considers the carrier space listed to be the carrier entry and the carrier space requested to be the demand entry), wherein the demand entry and carrier entry arrive through the communications network (Column 4, Lines 45-58); and
- c. A logic unit coupled to the database, for receiving a demand entries and matches demands with carrier entries (microprocessor 12, and Column 4, lines 27-44).
- d. An application program interface coupled with said link and with said logic unit, said application program interface configured for allowing said logic unit to access said information related to carrier availability from said partner databases (See Figure 1C with corresponding detailed description.

- e. Wherein the database, logic unit and program interface and the logic unit are part of an integrated exchange computer of the information exchange computer (See Reference Numeral 12 with corresponding detailed description).
 - f. Hunt discloses the use of multiple databases, which maintain information regarding information regarding shipping demand or carrier information and are registered with the system (subsystem 9). Further in Figure 1C discloses the use of multiple computers, which all connect between each other, have offers and demands and discloses in the detailed description that there can be more than just three computers. Databases are simply a collection of data. Therefore who the database belongs to, is not considered to be functional to the system. The system is a system which collects information from multiple sources and multiple entities, what those outside entities are not part of the system or the method, they are non-function to the action system itself. With respect to the limitation "send said information to said integrated exchange computer via an application program interface of said information exchange system" this limitation is not considered to be a positive limitation of the database, but simply how the information is intended to be transferred to the system. An interface is never claimed of the system, and a database is simply a collection of data that does not have any processors which would be programmed to transfer data. Therefore is considered to be intended use of the database.
5. Hunt however fails to disclose selecting one of a plurality of carriers, and automatically booking the selected carrier in response to the demand entry. Williams

Art Unit: 3629

discloses the use of automatically booking a selected carrier, based on an attribute such as capacity and location, and automatically booking the carrier (See Reference numerals 612 and 622, Column 7, line 20 to Column 8, line 39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of selecting and booking a carrier of Hunt, to be automated as disclosed by Williams, because the use of known techniques of automating the selection and booking of a carrier would have been obvious to one of ordinary skill in the art. (See KSR [127 S Ct. at 1739] “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

6. Hunt and Williams disclose the use of a logic unit which selects one of the plurality of carriers, however fails to disclose the unit automatically selecting one of the plurality of carriers based on an attribute of the demand entry. Theil discloses the use of automatic carrier selection (Reference numeral 5063 with corresponding detailed description) where a carrier is automatically selected based on services needed from a list of carriers (Column 5, lines 8-41). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Hunt and Williams, to have the carrier automatically selected, as discloses by Theil, in order to allow for the most beneficial carrier to be chosen, based on criteria, that is mistake-free and less time consuming. (See Theil, Column 5).

7. With respect to Claim 3: Hunt discloses the logic unit notifies a user when a demand entry or a carrier entry is received (Column 8, lines 41-62).

8. With respect to Claim 4: Hunt discloses the use of a subsystem (8, which forwards the demand entries to the central database). The examiner considers this subsystem to be a form of an enterprise resource planning system.

9. With respect to Claims 6-11, 17, 18, 28: Hunt discloses the use of generating reports using queries (which the examiner considers to be criterion) (Column 9, line 41 to Column 10, line 2). It should be noted that what specific information is on the reports is considered to be non-functional language, which is unrelated to the "system" claim. A system claim is drawn to the structural limitations of the system only, therefore the system would remain the same whether the reports generated contained demand information or carrier information, or were based on date ranges or time frames. The type of information that is printed on the reports is deemed non-function descriptive material. The system would remain the same no matter what information is on the reports, thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

10. With respect to Claim 12: Hunt discloses the shipping demand specification comprises a route (See Claim 1).

Art Unit: 3629

11. With respect to Claim 13: Hunt discloses the carrier availability information comprises carrier volume and date/time, which the examiner considers to be cargo dimension, and date of availability (See Claims 1 and 2).

12. With respect to Claim 14: Hunt discloses the processor using a RDB locator, which signals the system operator, or user, when a match has been located (Column 8, lines 53-62).

13. With respect to Claim 15: Hunt discloses the logic unit provides a user with the ability to make capacity based arrangements (See Claim 1).

14. With respect to Claim 16: Hunt discloses the logic unit provides a user with the option to conduct a transaction over the communications network (See Claim 12, Hunt discloses sending a bill or transaction code, therefore the examiner considers this to provide a transaction).

15. With respect to Claim 19: Hunt discloses the user request is entered and therefore stored, therefore the examiner considers this to be an implied request (Claim 1, item f).

16. With respect to Claim 26: Hunt discloses the logic unit formulates the response when a new entry is received (column 8, lines 36-40).

17. With respect to Claim 27: Hunt discloses the logic unit formulates the response at a pre-determined time interval (Column 8, lines 53-56).

18. With respect to Claim 30: Hunt discloses the use of a method comprising:

- g. Receiving a demand entry from a user comprising shipping demand specifications (See Claim 1);

Art Unit: 3629

- h. Receiving a carrier entry comprising demand specifications and carrier availability and storing in a transportation database (See abstract and Reference numeral 184 with corresponding detailed description). It should be noted that the carrier entry is stored in its own transportation database, and before it is matched the information is retrieved from the database to match with the request, therefore the examiner considers this to be receiving the carrier information from a database. The type of database or what it is called is considered to be non-functional descriptive material and does not effect the steps themselves. The information is received from a database, therefore what type of database does not functionally affect the steps. Furthermore the information comes from multiple carriers and there is multiple subsystems, therefore first and second carrier entries are being received from different databases;
- i. Together the matched demand and carrier entry are stored in a transaction database (Column 4, lines 26-44);
- j. Wherein the database and the logic unit are part of an integrated exchange computer of the information exchange system (See Reference Numeral 12 with corresponding detailed description).
- k. Hunt discloses the use of multiple databases, which maintain information regarding information regarding shipping demand or carrier information and are registered with the system (subsystem 9). Further in Figure 1C discloses the use of multiple computers, which all connect between each other, have offers and demands and discloses in the detailed description that there can be more than

just three computers. Databases are simply a collection of data. Therefore who the database belongs to, is not considered to be functional to the system. The system is a system which collects information from multiple sources and multiple entities, what those outside entities are not part of the system or the method, they are non-function to the action system itself. With respect to the limitation "send said information to said integrated exchange computer via an application program interface of said information exchange system" this limitation is not considered to be a positive limitation of the database, but simply how the information is intended to be transferred to the system. An interface is never claimed of the system, and a database is simply a collection of data that does not have any processors which would be programmed to transfer data. Therefore is considered to be intended use of the database.

19. Hunt however fails to disclose selecting one of a plurality of carriers, and automatically booking the selected carrier in response to the demand entry. Williams discloses the use of automatically booking a selected carrier, based on an attribute such as capacity and location, and automatically booking the carrier (See Reference numerals 612 and 622, Column 7, line 20 to Column 8, line 39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of selecting and booking a carrier of Hunt, to be automated as disclosed by Williams, because the use of known techniques of automating the selection and booking of a carrier would have been obvious to one of ordinary skill in the art. (See KSR [127 S Ct. at 1739] "The combination of familiar elements according

Art Unit: 3629

to known methods is likely to be obvious when it does no more than yield predictable results.”).

20. Hunt and Williams disclose a method which selects one of the plurality of carriers, however fails to disclose the unit automatically selecting one of the plurality of carriers based on an attribute of the demand entry. Theil discloses the use of automatic carrier selection (Reference numeral 5063 with corresponding detailed description) where a carrier is automatically selected based on services needed from a list of carriers (Column 5, lines 8-41). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Hunt and Williams, to have the carrier automatically selected, as discloses by Theil, in order to allow for the most beneficial carrier to be chosen, based on criteria, that is mistake-free and less time consuming. (See Theil, Column 5)

21. With respect to Claim 33: Hunt discloses the use of a subsystem (8, which forwards the demand entries to the central database). The examiner considers this subsystem to be a form of an enterprise resource planning system.

22. With respect to Claim 35: Hunt discloses the processor using a RDB locator, which signals the system operator, or user, when a match has been located (Column 8, lines 53-62).

23. With respect to Claim 37: Hunt discloses providing a user with a match of the demand and carrier specifications (Column 4, lines 45-58).

Art Unit: 3629

24. With respect to Claim 38: Hunt discloses the use of requests parameters, which the examiner considers to be a form of criterion (Column 8, lines 36-40).

25. With respect to Claim 39: Hunt discloses the shipping demand specification comprises a route (See Claim 1). And the carrier availability information comprises carrier volume and date/time, which the examiner considers to be cargo dimension, and date of availability (See Claims 1 and 2).

26. With respect to Claims 5 and 34: Hunt, as disclosed above for Claims 1 and 30, fails to disclose the logic unit allows a user to define a subgroup within the exchange system, and assign unrestricted access to only members of the subgroup. The examiner takes official notice that the use of defining a group who has unrestricted access to the system is old and well known in the art. Each computer system/network has a group of users, which have administrative rights. Administrative rights on the system or network gives a user unrestricted access to data as well as to the system itself. This is done on any Windows ® network product, such as Windows NT ®. Therefore it would have been old to one having ordinary skill in the art at the time the invention was made, to have the system of Hunt, allow a subgroup of users be assigned administrative rights, to have unrestricted access to the system, in order for the subgroup of people to have complete control over the data, for configuration purposes, and for problem solving purposes.

Art Unit: 3629

27. Claims 20-25, 29, 36 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al. (5,835,716) and Williams (6,560,509) and further in view of Nel (US 2003/0036935).

28. With respect to Claims 20 and 40: Hunt and Williams, as disclosed above for Claims 1 and 30, fails to disclose the use of a fleet monitoring system which monitors vehicles. Nel discloses the use of an allocating system for freight haulage jobs, which has a fleet monitoring system which uses GPS to locate vehicles (See Figure 1, satellites 30 and 32 with corresponding detailed description). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Hunt, to include a fleet monitoring system of Nel, in order to fill excess capacity of a vehicle, at any time during their transportation. (See Nel, abstract)

29. With respect to Claim 21: Nel discloses the logic unit alerts a delivery vehicle when a new demand entry matches a location of the delivery vehicle as determined by the fleet monitoring system (Paragraph 0026 and 0039).

30. With respect to Claim 22: Nel discloses that each of the delivery vehicles contains a GPS unit and a wireless modem that transmits location data for each of the delivery vehicles to the fleet monitoring system (Paragraphs 0027 and 0028).

31. With respect to Claim 23: Nel discloses the wireless modem provides an internet connection to the fleet monitoring system (Paragraphs 0029 and 0030).

32. With respect to Claim 24: Nel discloses the delivery vehicle contains a portal allowing a driver to see demands from the database (Paragraph 0027-0029, Nel discloses each vehicle has a mobile communications unit which accesses job allocation

Art Unit: 3629

services provided by the job manager, therefore the examiner considering this to be a portal, which is fully capable of allowing a driver to view demand entries).

33. With respect to Claim 25: Nel discloses the GPS and wireless modem automatically transmits location data for the delivery vehicles to the fleet monitoring system and the logic unit uses the location data in determining whether to send an alert to the delivery vehicle (Paragraphs 0015 and 0026).

34. With respect to Claims 29 and 36: Nel, discloses for each vehicle, the rates are given in the carrier specification (Paragraph 0037) and the matching of demands and carriers are based on bid prices as well as rates (Paragraphs 0006, 0045 and 0047)

35. With respect to Claim 41: Nel discloses alerting a delivery vehicle when the location of the delivery vehicles matches a parameter of a demand entry (Paragraphs 0032-0039).

36. With respect to Claim 42: Nel discloses the delivery vehicles comprise a location determining unit and a wireless connected to a communications network (Paragraphs 0029 and 0030).

(10) Response to Argument

With respect to Appellant's Argument in terms of Claim 1 and Hunt not disclosing partner databases: A database is simply a collection of information, therefore who owns the database or what information is within a database, does not get patentable weight until the claims give functionality to them. Even though the database may be disclosed as belonging to partner entities, the databases are run and are kept outside of the system. The system itself, receives information from multiple sources, and uses the

Art Unit: 3629

information. In order for the outside systems and types of databases and who owns them to impart functionality to the claim, they must perform a separate function, which a carrier or shipper would not or could not do. And it must be claimed as a positive limitation, not a descriptive wherein clause. For a method, the particular type of information gathered from the partner database must be separate and distinct from the other data, and used in a particular way in order for the data to be functional to the system. There must be a specific manipulation step which is performed differently due to the fact that it is coming from a partner database. As written now, the claims are directed towards a method and system for receiving data from 3 separate entities then matched, therefore what the entities are called or their functionality outside of the system is not considered to be functional data and distinguish over the art in terms of patentability. Additionally, the Appellant argues the databases "separate" from the location of the central database. As currently claimed, the claims do not claim the "databases" at a separate location, they simply claim them as belonging to different entities.

The examiner draws the Board and Appellants attention to Fig. 1C and corresponding text of Hunt at C.5 l. 20-60, in which it is identified that the system is comprised of subsystems(partner databases) and represent a network of direct point to point systems or in a shared network environment, the database could reside on any of the subsystems or of the subsystems.

Lastly the appellant has failed to set forth proper arguments as to how the instant applicant reads differently and/or over the prior art cited. Appellant's arguments fail to

comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Appellant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

37. With respect to Appellant's arguments that the examiner has unsupported Official Notice. The appellant is challenging the official notice by simply stating that the office action has inappropriately taken official notice of the technical facts. The MPEP states that the challenge is not enough, the applicant must state that the facts the examiner is taking office notice of being old and well known in the art are in fact not old and well known in the art. As stated in the previous response. The examiner took official notice that the use of defining a group who has unrestricted access to the system is old and well known to the art. This is not an assertion of technical fact in an area of esoteric technology nor is it specific knowledge of a prior art reference. It is the examiner stating that given a set of users unrestricted access to a computer system is old and well known in the art, and even gave specific examples of when this is the case, which is outlined in the MPEP 2144.03, as being appropriate for fact asserted to be well-known or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. It goes on to state that the examiner must set forth specific factual findings predicated on sound technical

Art Unit: 3629

reasoning and scientific reasoning to support his or her conclusion of common knowledge. The examiner has provided support and reasoning for the finding as outlined above. Furthermore, the applicant has argued that Official Notice incorrectly stating that it is unsupported, the applicant has not stated that what the examiner has stated is old and well known in the art (defining a group who has unrestricted access to a system) is not in fact old and well known. The applicant has not challenged the Official Notice Properly as outlined in 2144.03 (C.) and therefore the argument is not persuasive and the rejection stands as stated above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Traci L Casler/

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Application/Control Number: 10/000,121
Art Unit: 3629

Page 18